

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**TIMOTHY C. HARRY and
KAREN C. HARRY,**

Plaintiffs,

v.

AMERICAN BROKERS CONDUIT, et al.,

Defendants.

**Civil Action No.
16-10895-FDS**

ORDER DENYING MOTIONS FOR DEFAULT JUDGMENT

SAYLOR, J.

On June 28, 2016, a default was entered against defendants American Brokers Conduit and Apex Mortgage Services under Fed. R. Civ. P. 55(a). On July 8, 2016, plaintiffs Timothy and Karen Harry moved for entries of default judgment against those same defendants. Because it was unclear whether plaintiffs had properly completed service of process on those defendants, this Court issued an order to show cause on December 22, 2016. The Harrys responded on January 12, 2017, demonstrating that service had been properly completed.

That same day, the Court entered a memorandum and order dismissing all counts of the amended complaint as to all other defendants, except a claim for violation of the Fair Debt Collection Practices Act as to Ocwen Loan Servicing, LLC. Among other things, the Court found that the limitations period had expired as to the Harrys' claims, and that equitable estoppel and equitable tolling did not apply.

On October 23, 2017, the Court denied the Harrys' motion for default judgment without

prejudice, noting that Fed. R. Civ. P. 54(b) required that judgment could not enter until all claims were resolved as to all parties.

On August 16, 2018, the Court granted Ocwen's motion for summary judgment. Accordingly, all other claims have now been resolved.

Since then, the Harrys have filed renewed motions for default judgment as to American Brokers Conduit and Apex Mortgage Services, seeking approximately \$24 million in damages. However, for the reasons set forth in the Court's January 12, 2017 memorandum and order, it is clear that their claims against those defendants are without merit, either because they are time-barred or because they fail to state a valid cause of action. In addition, the amounts claimed are obviously grossly excessive, and the Harrys have failed to show any prejudice. Under the circumstances, the entry of default judgment is inappropriate. *See Lau v. Cooke*, 2000 WL 287690, at *2 (2d Cir. Mar. 16, 2000) (affirming denial of motion for default judgment as within the district court's discretion where plaintiff's claims were without merit, no prejudice was shown, and the amount sought by plaintiff was substantial); *see also Limehouse v. Delaware*, 2005 WL 1625233, at *2 (3d Cir. July 12, 2005); *Marshall v. Bowles*, 2004 WL 515915, at *2 (6th Cir. Mar. 15, 2004).

For the foregoing reasons, the Harrys' motions for default judgment as to defendants American Brokers Conduit and Apex Mortgage Services are DENIED. Because there is no apparent reason why the claims against American Brokers Conduit and Apex Mortgage Services should remain pending, and because there is no reason for additional delay, the clerk is directed to dismiss the claims against those two parties without prejudice and to enter final judgment.

So Ordered.

Dated: August 24, 2018

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge